

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

OPENAI, INC.

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This Document Relates To:

News Cases

Case No. 1:25-md-3143-SHS-OTW

**DEFENDANT MICROSOFT CORPORATION'S RESPONSE TO NEWS PLAINTIFFS'
MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Paragraph 21 of the Stipulated Protective Order in the News Cases (*Daily News* ECF 129), Defendant Microsoft Corporation ("Microsoft") submits this response in support of News Plaintiffs' Motion to Seal (ECF 250) ("Motion") requesting that Exhibit A to News Plaintiffs' Letter submitting a supplemental document in connection with their letter motion regarding production of metric-tracking dashboards ("Supplemental Letter") (ECF 249-1) be sealed.

Although "[t]he common law right of public access to judicial documents is firmly rooted in our nation's history," this right is not absolute and courts "must balance competing considerations against" the presumption of access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). "The proponent of sealing 'must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)). "[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions" *Brown v. Maxwell*,

929 F.3d 41, 50 (2d Cir. 2019). “[W]hile a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.” *Id.*

Exhibit A to the Supplemental Letter contains screenshots from a confidential video, the disclosure of which would unfairly prejudice Microsoft. Exhibit A, which has been designated “CONFIDENTIAL” pursuant to the Protective Order, contains confidential information containing metrics related to Microsoft’s work. *See* Ex. A (Declaration of Lucky Vidmar). It has also been exchanged during the course of discovery and is designated under the Protective Order. *New York Times*, ECF 378. Microsoft requests that Exhibit A is sealed in its entirety.

The information Microsoft seeks to seal is the type of information commonly found to warrant sealing. *See id.* (granting motion to seal similar information and documents in this case); *see also Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”).

For the reasons stated above, and those set forth in the Declaration of Lucky Vidmar, Microsoft supports News Plaintiffs’ Motion to Seal Portions (ECF 250). Specifically, Microsoft requests that Exhibit A (ECF 249-1) be sealed.

Dated: June 30, 2025

Respectfully submitted,

/s/ Jared B. Briant

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